

Response to March 2, 2005 Advisory Action
Appl. No. 09/897,801
April 20, 2005

Remarks

Applicant requests reconsideration on the merits of the above-referenced patent application.

I. Acknowledgment of withdrawal of rejections based on 35 U.S.C. §§102(e) & 103(a)

Applicant acknowledges that the claim rejections based on 35 U.S.C. §§102(e) and 103(a) set forth in the June 10, 2004 Office action have been withdrawn, and that the only remaining rejection is the double patenting rejection.

II. Response to the provisional obviousness-type double patenting rejection of claims 85-92, 94-102, 105-113, 116, 119-136, and 138

The January 10, 2005 Office action provisionally rejected claims 85-92, 94-102, 105-113, 116, 119-136, and 138 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 and 44-77 of U.S. Patent Application No. 10/443,361. Applicant requests withdrawal of this rejection. U.S. Patent Application No. 10/443,361 still has not issued as a patent. As noted in MPEP §804(I):

[i]f the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent

In the instant application, the provisional double patenting rejection is the only rejection remaining. Accordingly, it should be withdrawn.

Because the provisional rejection must be withdrawn based on the above reason alone, Applicant makes no further representation as to the merits of the provisional rejection. In particular, Applicant makes no representation as to the merits of the statements in the Office action regarding whether the claims in this application are patentably distinct from the claims in U.S. Patent Application No. 10/443,361.

The March 2, 2005 Advisory Action cites to U.S. Patent Application No. 09/606,909 in maintaining the double-patenting rejection. Applicant believes that this may be an inadvertent error, given that the final office action cites to U.S. Patent Application No. 10/443,361. In any event, even if U.S. Patent Application No. 09/606,909 was intentionally

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cited, the rejection would have to be withdrawn to the extent U.S. Patent Application No. 09/606,909 still has not issued as a patent. Applicant is not aware of U.S. Patent Application No. 09/606,909 issuing as a patent. Because Applicant believes that the provisional rejection must be withdrawn based on the above reason alone, Applicant makes no further representation as to the merits of the rejection.

III. Call between Examiner and the Undersigned

On April 20, 2005, the Examiner and Undersigned discussed the status of this patent application. No substance was discussed, and no agreement was reached as to the patentability of the claims. Applicant and the Undersigned thank the Examiner for his courtesy during the call.

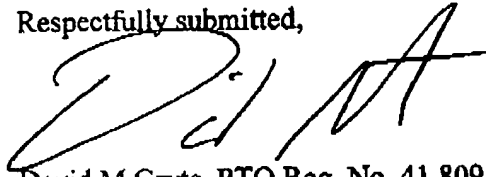
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Applicant hereby requests a one-month extension to respond to the January 10, 2005 Office action, and authorizes the Commissioner is hereby authorized to charge the fee for this extension to Deposit Account No. 08-0750. Applicant does not believe any additional fee is owed in connection with this filing. If, however, Applicant does owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No. 08-0750. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or §1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. 08-0750.

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Applicant submits that the application is in condition for allowance, and requests that it be allowed. Applicant requests that the Examiner call the Undersigned if any issues arise that can be addressed over the phone to expedite examination of this application.

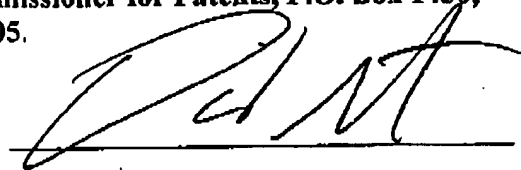
Respectfully submitted,



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CERTIFICATE OF FACSIMILE

I certify that this is being sent via facsimile to (703) 872-9306 to the attention of Examiner Michael J. Hayes, Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on April 20, 2005.



DMG/PML